REMARKS

This is a full and timely response to the outstanding final Office Action mailed August 9, 2004 (Paper No. 14). Upon entry of this response, claims 1-3, 5-13, and 16-48 are pending in the application. In this response, claims 8, and 11 have been amended and claims 21-48 have been added. Applicants respectfully request that the amendments being filed herewith be entered and that there be reconsideration of all pending claims.

1. Rejection of Claims 1-3, 5-13, and 16-20 under 35 U.S.C. §103

Claims 1-3, 5-13, and 16-20 have been rejected under §103(a) as allegedly obvious over *Schulman* (U.S. 5,600,632) in view of *Ennis Jr. et al.* (U.S. 5,867,483). Applicants respectfully traverse the rejection of claims 1-3, 5-7, and 16-18. Applicants respectfully submit that the rejection of claims 8-13 and 19-20 have been overcome by the claim amendments herein. It is well established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly, all elements/features/steps of the claim at issue. *See, e.g., In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

a. Claim 1

1) *Schulman* does not disclose, teach, or suggest "a virtual circuit between the first and the second communication device"

The Office Action alleges that this limitation is disclosed in Col. 2, lines 3-13 of *Schulman*. (Office Action, p. 2, section 2.) Applicants respectfully disagree. Claim 1 recites "a virtual circuit between the first and the second communication device," and the Office Action alleges that the network analyzers (M) of *Schulman* correspond to the claimed "first and second

communication device." However, the cited passage in *Schulman* merely discloses a permanent virtual circuit between server 157 and DET 150 in the network of FIG. 1, not between two network analyzers.

Applicants further submit that the server 157 and DET 150 cannot correspond to "the first and second communication device." Claim 1 recites also recites "means for collecting, from a first and a second communication device" various types of network information associated with the virtual circuit. Since *Schulman* contains no teaching that network information is collected from network server 157 and DET 150, the cited passage in *Schulman* does not disclose the above-described feature recited in claim 1.

2) *Schulman* does not disclose, teach, or suggest "bit burst analysis information, network latency information, data delivery success information and frame size distribution information associated with a virtual circuit"

The Office Action alleges that this limitation is disclosed in Col. 7, lines 48-49 and 52-53 of *Schulman*. (Office Action, p. 2, section 2.) Applicants respectfully disagree. *Schulman* discloses network analyzers that collect network information, but does not teach, disclose, or suggest that the collected information is associated with a virtual circuit. *Schulman* contains a list of "network statistics" that are "extracted" from "captured packets." (Col. 4, lines 50-65). The list of network statistics includes "(a) average packet latency between two points; (b) packet latency distribution; (c) packet size distribution; (d) packet size minimum and/or maximum; (e) minimum and/or maximum latency; (f) packet fragmentation; (g) packet loss; (h) packet retranmission; (i) sliding window algorithm efficiency; and (j) throughput." (Col. 4, line 50 to Col. 5, line 10; Col. 7, lines 40-55). *Schulman* does not disclose what entity these collected statistics relate to. In contrast, claim 1 recites that the information is "associated with a virtual circuit."

Even assuming, *arguendo*, that *Schulman* suggests a virtual circuit exists between two network analyzers, network information collected by the analyzers is not inherently associated with a virtual circuit. The information could be associated with many other entities, for example: a MAC layer address; an IP address; a group of addresses; or a TCP port.

3) *Ennis Jr. et al.* does not disclose, teach, or suggest "bit burst analysis information, network latency information, data delivery success information and frame size distribution information associated with a virtual circuit"

Ennis Jr. et al. teaches a probe that maintains a series of counters related to access channel and circuit utilization, and a console that retrieves these counters from the probe. (Col. 3, line 50 to Col. 4, line 20.) *Ennis Jr. et al.* does not teach the specific types of network information recited in claim 1.

Accordingly, the proposed combination of *Schulman* in view of *Ennis Jr. et al.* does not teach at least the above-described features recited in claim 1. Since the proposed combination does not teach at least the above-described features recited in claim 1, a *prima facie* case establishing an obviousness rejection has not been made. Thus, claim 1 is not obvious under the proposed combination of *Schulman* in view of *Ennis Jr. et al.*, and the rejection should be withdrawn.

b. Claim 5

1) *Schulman* does not disclose, teach, or suggest "a virtual circuit between the first and the second communication device"

The Office Action alleges that this limitation is disclosed in Col. 2, lines 3-13 of *Schulman*. (Office Action, p. 2, section 2.) Applicants respectfully disagree. Claim 5 recites "a virtual circuit between the first and the second communication device," and the Office Action alleges that the network analyzers (M) of *Schulman* correspond to the claimed "first and second communication device." However, the cited passage in *Schulman* merely discloses a permanent

virtual circuit between server 157 and DET 150 in the network of FIG. 1, not between two network analyzers.

2) *Schulman* does not disclose, teach, or suggest "wherein said views are associated with a virtual circuit"

The Office Action alleges that this limitation is disclosed in Col. 7, lines 48-49 and 52-53 of *Schulman*. (Office Action, p. 2, section 2.) Applicants respectfully disagree. *Schulman* discloses network analyzers that collect network information. Applicants also assume, *arguendo*, that FIGs. 8, 9, and 10a are views of collected network information. However, *Schulman* does not teach, disclose, or suggest that the views are associated with a virtual circuit. *Schulman* contains a list of "network statistics" that are "extracted" from "captured packets." (Col. 4, lines 50-65). The list of network statistics includes "(a) average packet latency between two points; (b) packet latency distribution; (c) packet size distribution; (d) packet size minimum and/or maximum; (e) minimum and/or maximum latency; (f) packet fragmentation; (g) packet loss; (h) packet retranmission; (i) sliding window algorithm efficiency; and (j) throughput." (Col. 4, line 50 to Col. 5, line 10; Col. 7, lines 40-55). *Schulman* does not disclose what entity these collected statistics relate to. In contrast, claim 5 recites that "said views are associated with a virtual circuit."

3) *Ennis Jr. et al.* does not disclose, teach, or suggest "a bit burst analysis view, a network latency view, a data delivery success view and a frame size distribution view associated with a virtual circuit"

Ennis Jr. et al. teaches a probe that maintains a series of counters related to access channel and circuit utilization, and a console that retrieves these counters from the probe. (Col. 3, line 50 to Col. 4, line 20.) *Ennis Jr. et al.* does not teach the specific types of network information recited in claim 5.

Accordingly, the proposed combination of *Schulman* in view of *Ennis Jr. et al.* does not teach at least the above-described features recited in claim 5. Since the proposed combination does not teach at least the above-described features recited in claim 5, a *prima facie* case establishing an obviousness rejection has not been made. Thus, claim 5 is not obvious under the proposed combination of *Schulman* in view of *Ennis Jr. et al.*, and the rejection should be withdrawn.

c. Claims 2-3, 6-7, and 16-18

Since claims 1 and 5 are allowable, Applicants respectfully submit that claims 2-3, 6-7, and 16-18 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicants respectfully request that the rejection of claims 2-3, 6-7, and 16-18 be withdrawn.

d. Claim 8

1) *Schulman* does not disclose, teach, or suggest "a virtual circuit between the first and the second communication device"

Claim 8 has been amended to recite "a virtual circuit between the first and the second communication device." The only discussion in *Schulman* of virtual circuits describes a virtual circuit between server 157 and DET 150 in the network of FIG. 1. However, Applicants submit that the server 157 and DET 150 cannot correspond to "the first and second communication device." Amended claim 8 also recites "collecting, from a first and a second communication device" various types of network performance parameter information. *Schulman* does not teach, disclose, or suggest that network information is collected from network server 157 and DET 150. Therefore, *Schulman* does not disclose the above-described feature recited in claim 8.

2) *Schulman* does not disclose, teach, or suggest "bit burst analysis information, network latency information, data delivery success information and frame size distribution information associated with a virtual circuit"

Claim 8 has been amended to recite "information associated with a virtual circuit." *Schulman* discloses network analyzers that collect network information, but does not teach, disclose, or suggest that the collected information is associated with a virtual circuit. *Schulman* contains a list of "network statistics" that are "extracted" from "captured packets." (Col. 4, lines 50-65). The list of network statistics includes "(a) average packet latency between two points; (b) packet latency distribution; (c) packet size distribution; (d) packet size minimum and/or maximum; (e) minimum and/or maximum latency; (f) packet fragmentation; (g) packet loss; (h) packet retranmission; (i) sliding window algorithm efficiency; and (j) throughput." (Col. 4, line 50 to Col. 5, line 10; Col. 7, lines 40-55). *Schulman* does not disclose what entity these collected statistics relate to. In contrast, claim 8 recites that the information is "associated with a virtual circuit."

Even assuming, *arguendo*, that *Schulman* suggests a virtual circuit exists between two network analyzers, network information collected by the analyzers is not inherently associated with a virtual circuit. The information could be associated with many other entities, for example: a MAC layer address; an IP address; a group of addresses; or a TCP port.

3) *Ennis Jr. et al.* does not disclose, teach, or suggest "bit burst analysis information, network latency information, data delivery success information and frame size distribution information associated with a virtual circuit"

Ennis Jr. et al. teaches a probe that maintains a series of counters related to access channel and circuit utilization, and a console that retrieves these counters from the probe. (Col. 3, line 50 to Col. 4, line 20.) *Ennis Jr. et al.* does not teach the specific types of network information recited in claim 8. Accordingly, the proposed combination of *Schulman* in view of

Ennis Jr. et al. does not teach at least the above-described features recited in amended claim 8, and the rejection should be withdrawn.

e. Claim 11

1) *Schulman* does not disclose, teach, or suggest "a virtual circuit between the first and the second communication device"

Claim 11 has been amended to recite "a virtual circuit between the first and the second communication device." The only discussion in *Schulman* of virtual circuits describes a virtual circuit between server 157 and DET 150 in the network of FIG. 1. However, Applicants submit that the server 157 and DET 150 cannot correspond to "the first and second communication device." Amended claim 11 also recites "collecting, from a first and a second communication device" various types of network performance information. *Schulman* does not teach, disclose, or suggest that network performance information is collected from network server 157 and DET 150. Therefore, *Schulman* does not disclose the above-described feature recited in amended claim 11.

2) *Schulman* does not disclose, teach, or suggest "wherein said information is associated with a virtual circuit"

Claim 11 has been amended to recite "wherein said information is associated with a virtual circuit." *Schulman* discloses network analyzers that collect network performance information, but does not teach, disclose, or suggest that the collected information is associated with a virtual circuit. *Schulman* contains a list of "network statistics" that are "extracted" from "captured packets." (Col. 4, lines 50-65). The list of network statistics includes "(a) average packet latency between two points; (b) packet latency distribution; (c) packet size distribution; (d) packet size minimum and/or maximum; (e) minimum and/or maximum latency; (f) packet fragmentation; (g) packet loss; (h) packet retranmission; (i) sliding window algorithm efficiency;

and (j) throughput." (Col. 4, line 50 to Col. 5, line 10; Col. 7, lines 40-55). *Schulman* does not disclose what entity these collected statistics relate to. In contrast, claim 11 recites that "said information is associated with a virtual circuit."

3) *Ennis Jr. et al.* does not disclose, teach, or suggest "bit burst analysis information, network latency information, data delivery success information and frame size distribution information associated with a virtual circuit"

Ennis Jr. et al. teaches a probe that maintains a series of counters related to access channel and circuit utilization, and a console that retrieves these counters from the probe. (Col. 3, line 50 to Col. 4, line 20.) *Ennis Jr. et al.* does not teach the specific types of network performance information recited in claim 11. Accordingly, the proposed combination of *Schulman* in view of *Ennis Jr. et al.* does not teach at least the above-described features recited in claim 11, and the rejection should be withdrawn.

f. Claims 9, 10, 12, 13, 19, and 20

Since claims 8 and 11 are allowable, Applicants respectfully submit that claims 9, 10, 12, 13, 19, and 20 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicants respectfully request that the rejection of claims 9, 10, 12, 13, 19, and 20 be withdrawn.

2. Newly Added Claims

Applicants submit that no new matter has been added in the new claims 21-48 and that new claims 21-48 are allowable over the cited references. Specifically, independent claim 24 is allowable for at least the reason that none of the cited references teach, disclose, or suggest a "means for collecting, from a first and a second communication device, bit burst analysis information, network latency information, data delivery success information and frame size distribution information associated with a virtual circuit between the first and the second

communication device." Independent claims 30 and 36 are allowable for at least the reason that none of the cited references teach, disclose, or suggest a "collecting, from a first and a second communication device, bit burst analysis information, network latency information, data delivery success information and frame size distribution information associated with a virtual circuit between the first and the second communication device." Independent claim 42 is allowable for at least the reason that none of the cited references teach, disclose, or suggest a "independent claim 24 is allowable for at least the reason that none of the cited references teach, disclose, or suggest a "means for collecting, from a first and a second communication device, bit burst analysis information, network latency information, data delivery success information and frame size distribution information associated with a virtual circuit between the first and the second communication device." Therefore, Applicants request that the Examiner enter and allow the above new claims.

CONCLUSION

Applicants respectfully request that all outstanding objections and rejections be withdrawn and that this application and presently pending claims 1-3, 5-13, and 16-48 be allowed to issue. If the Examiner has any questions or comments regarding Applicants' response, the Examiner is encouraged to telephone Applicants' undersigned counsel.

Respectfully submitted,

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